

from the list, as the conservative gratify Fein pointed out, were two who made headlines during the year. One is federal Judge John Spizzo in New York, who acquitted two men arrested for blocking access to an abortion clinic because their actions stemmed from "conscience-driven religious belief" rather than willful criminal intent. The other is a state court judge in Alabama who posted in Ten Commandments in his courtroom and invited clergy to lead juries in prayer prior to hearing cases. The FRC's director, Gary Bauer, was willing to offer a written definition of judicial activism for this story but was unavailable over several weeks for an interview to discuss the topic.

"So many conservatives are so unprincipled in attacking judicial activism because the real grievance is against the results they don't like," said Fein, a columnist for the conservative Washington Times newspaper and a regular commentator on CNN, "And the standards Republicans are now voicing to screen Clinton nominees is what they said in the Bork hearings should never be applied," he said referring to the failed Republican nomination of Robert Bork in 1986.

The Jihad against judicial activism is seen some, in part, as the continuation of a dynamic the simmered through the Bork hearings: a long continuing battle against the Warren and Burger court. For one such attack through the rear-view mirror former attorney general Edwin Meese appeared Ashcroft's hearings on judicial activism. A fellow the Heritage Foundation, Meese followed up, releasing to the Judiciary Committee a report titled "Putting the Federal Judiciary Back on Track." The former Reagan administration official wants a number of landmark decisions by the Warren and Burger courts reversed, and agrees with Bork much-criticized belief that Congress should be empowered to overrule Supreme Court decision by simple majority vote.

For some, that rear-view mirror is cloudy. "The irony of complaints now about judicial activism," said Professor Erwin Chemerinsky of the University of Southern California Law School, "is that the majority of justices on the Supreme Court and the majority of federal judges are Republican appointees. And the Supreme Court hasn't recognized a new constitutional right in 25 years."

That may be why many believe the judicial activism wars are more of a political tool. Federal judges and the Supreme Court are "pushing fewer hot bottoms than they were 25 or 30 or 40 years ago," said A.E. Dick Howard, a constitutional scholar at the University of Virginia School of Law. The debate over judicial activism "is not as hot today. No attack on the modern court is comparable to [President Richard] Nixon's attacks on the Warren court."

There is no broad-based criticism of the courts today that compares to the time of Brown v. Board of Education, 347 U.S. 483 (1954), and issues of one-person-one-vote and school prayer. Howard explained. Criticism today is more episodic, he said.

On Capitol Hill, senators trying to break the lock on judicial nominations believe Chief Justice Rehnquist should go further than criticizing it in his annual report on the judiciary, "Who reads that?" asks one Senate staffer, "He needs to get out and say it in speeches." And others say that if President Clinton went to war over one or two judges, win or lose in Senate confirmations, the floodgates would open for all the others. "Every time a president has fought, if it looks like he's fighting for principle, he wins politically," said Professor Herman Schwartz, of American University's Washington College of Law. "People would pay attention, American like an independent judiciary."

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Christina A. Snyder, of California, to be U.S. District judge for the central district of California? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Colorado [Mr. CAMPBELL] is necessarily absent.

The result was announced—yeas 93, nays 6, as follows:

[Rollcall Vote No. 297 Ex.]

YEAS—93

Abraham	Frist	Mack
Akaka	Glenn	McCain
Allard	Gorton	McConnell
Ashcroft	Graham	Mikulski
Baucus	Gramm	Moseley-Braun
Bennett	Grassley	Moynihan
Biden	Gregg	Murkowski
Bingaman	Hagel	Murray
Bond	Harkin	Nickles
Boxer	Hatch	Reed
Breaux	Helms	Reid
Brownback	Hollings	Robb
Bryan	Hutchinson	Roberts
Bumpers	Hutchison	Rockefeller
Byrd	Inhofe	Roth
Chafee	Inouye	Santorum
Cleland	Jeffords	Sarbanes
Coats	Johnson	Sessions
Cochran	Kempthorne	Shelby
Collins	Kennedy	Smith (NH)
Conrad	Kerrey	Smith (OR)
D'Amato	Kerry	Snowe
Daschle	Kohl	Specter
DeWine	Kyl	Stevens
Dodd	Landrieu	Thomas
Domenici	Lautenberg	Thompson
Dorgan	Leahy	Thurmond
Durbin	Levin	Torricelli
Feingold	Lieberman	Warner
Feinstein	Lott	Wellstone
Ford	Lugar	Wyden

NAYS—6

Burns	Craig	Faircloth
Coverdell	Enzi	Grams

NOT VOTING—1

Campbell

The nomination was confirmed.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

ORDER OF PROCEDURE

Mr. LEAHY. I see the distinguished majority and minority leaders on the floor. If they are seeking recognition, obviously I yield, but I ask that I be recognized for less than 5 minutes after they are finished.

Mr. LOTT. I thank the Senator for being willing to yield. I think the Senators would like to hear a little bit more about what the schedule would be, and now is a good time to do it.

I ask unanimous consent once we have completed this discussion, Senator LEAHY be recognized for 5 minutes to speak as he sees fit.

The PRESIDING OFFICER (Mr. HUTCHINSON). Without objection, it is so ordered.

MORNING BUSINESS

Mr. LOTT. I ask unanimous consent there now be a period of morning busi-

ness until 3:30, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

APPROPRIATIONS COMMITTEE MEETING

Mr. STEVENS. I announce to the Senate that the Appropriations Committee will meet tomorrow at noon to see if we can devise a way to complete action on all bills tomorrow. That is tomorrow at 12 noon in 128.

SCHEDULE

Mr. LOTT. Mr. President, Senator DASCHLE and I have been talking about the rest of the schedule this afternoon.

First, once again, I am very pleased that after 3 years of effort, we have a bipartisan compromise on Amtrak reform. That was a good day's work. It still has to go to conference, but I believe now that we have a good chance to get that legislation through. That would be very beneficial to maintaining a national rail passenger system that would pay for itself.

I believe we are now prepared to go to the D.C. bill. We have worked out an agreement on that. Then later on this afternoon we hope to be able to have another vote. We hoped we would get something on the labor-HHS appropriations conference report. We don't know for sure, but that may not be possible. We still have the option to go back to fast track, and there are some amendments, I am sure, that are in the offing. But whatever votes we would have this afternoon, and it appears it would be a minimum of one more vote, but the last vote for today would occur not later than 5 p.m. this afternoon, and we would then come back in tomorrow at noon and get an assessment of where we are.

We are still hoping there may be an FDA reform conference report agreement. There is a possibility. We have worked out an agreement on the adoption-foster-care issue. If either of those are ready, we would try to do those tomorrow afternoon. We also would get an assessment of what will happen with regard to the appropriations bills coming from the House and also see if there is any way we can take some action that would help to expedite some conclusion to the appropriations process.

With regard to fast track, we will continue to go back to it and have discussion, debate, and amendments when they are ready. The House has delayed their taking a vote on fast track until Saturday or Sunday. They will not do it today. Of course, that will have an impact on what we do and when we do it. I don't think we can say anything beyond that until we see what happens in the House.

We have been asked by our colleagues in the House and by the administration to stay and continue to work to see if we can resolve the outstanding issues

on appropriations and be prepared to act on fast track, if and when the House does act. We will keep the Members informed. We will try to be conscious of schedules, but I think you should be prepared to have at least one more vote this afternoon, and there is a possibility that there would be a vote or two tomorrow afternoon and Sunday afternoon.

Again, on Sunday we would not be in until probably 1 o'clock to give Members an opportunity to go to church. One of the reasons why we won't have votes after 5 o'clock tonight is because of the Jewish sabbath. We are trying to honor Members' commitments in that regard while still trying to move this process forward.

There is a 50-50 chance, still, that we can finish all this by Sunday. There is one thing for sure: If we don't stay here and keep working, there is a 100-percent chance we will be here next Friday. Let's keep trying to get it to a conclusion. I believe it is possible.

I thank Senator DASCHLE for collaborating with me on these issues. I wonder if the minority leader might want to add anything?

Mr. DASCHLE. I think the majority leader has laid it out pretty well. We have had a lot of questions about what the schedule is for the weekend. As the majority leader has indicated, we can expect to be here tomorrow and most likely on Sunday. I think if we can work as we have in the last few hours on appropriations bills and other related legislation, there is at least that 50-50 chance we can complete our work this weekend.

One of the concerns that I have been hearing is that at some of the meetings we are not getting the kind of attendance that is necessary in order to complete the negotiations. I urge all Senators, as these meetings are scheduled—sometimes they are with very short notice—that people drop what they are doing and come to the meetings so we can expedite these negotiations.

I appreciate everyone's participation and cooperation and, again, we will work with the majority leader to see if we can accommodate what he has laid out for the agenda for this weekend.

Mr. LOTT. I yield the floor.

Mr. LEAHY. Mr. President, I ask unanimous consent to be able to yield to the senior Senator from Alaska without losing my right to the floor.

PRIVILEGE OF THE FLOOR

Mr. STEVENS. Mr. President, I ask unanimous consent that Katie Howard be permitted privileges of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

DAIRY DECISION OF MINNESOTA FEDERAL COURT

Mr. LEAHY. Mr. President, a court decision was issued recently which could throw the entire system of sup-

plying milk to consumers into chaos and could lead to dramatically higher milk prices for consumers.

This decision was a runaway ruling that jeopardizes the survival of thousands of dairy farmers outside the Midwest.

The current milk marketing order system assures local milk production and reliable supplies of fresh and wholesome local milk."

The system is designed, according to the Congressional Research Service, to avoid "shortages of milk," and "to assure consumers of adequate and dependable supplies of pure and wholesome fluid milk."

In this respect, America is the envy of many nations in the world which have unreliable milk supplies shipped in from distant locations at high prices because there is no local competition.

Price differentials, which were struck down in this decision, help keep local producers in business, help cover the costs of transporting fluid milk, and avoid shortages of milk in supermarkets, according to CRS.

Common sense tells us that the cost of producing and transporting milk varies from region to region. A flat pricing system is flat-out wrong.

I joined with 47 of my colleagues recently in sending a letter to the Secretary of Agriculture urging him to keep the current system which assures local supplies of fresh milk to millions of American families.

The key to this system that has worked so well for decades is under attack—once again—in Minnesota.

It is no secret that Northern Midwestern States want to provide milk to the Nation. New technology is available where they can "drain" the water out of their milk, ship the resulting concentrate, and then reconstitute the milk at distant locations.

Over time, this new concentration of the dairy industry in Northern Midwestern States could put thousands of dairy farmers out of business around the Nation. I am very afraid that, ultimately, prices to consumers will rise as the supply of milk becomes more and more concentrated in one area of the country.

My major fear is that when Midwestern winter storms blanket roads with snow, or when freezing conditions in the North stop traffic on the interstates, or when there is a trucker's strike, that consumers in the rest of the country are going to feel lucky if they can buy milk for just \$5 a gallon. Parents who need milk for children might want to pay a lot more than \$5 a gallon, if they could buy milk at any price.

I do not think consumers are going to like this system of being dependent on reconstituted milk being shipped in from 1,000 miles away at who knows what price.

Our current system of encouraging local production of milk works very well for consumers. USDA has been right to promote the local production

of fresh milk instead of this system of concentrating the industry in one region and then shipping products to be reconstituted into milk later.

The Court's ruling—unless stayed—will be effective almost immediately. The order will not have a great deal of effect in states fortunate enough to be in Northeast Dairy Compact, or in states that have their own milk order system such as California.

In those states, local dairy farmers should be able to stay in business and provide towns and cities with local, fresh supplies of milk.

When disasters, or winter storms hit, consumers in these areas will be able to buy milk.

USDA must appeal the decision immediately—no ifs, ands, or buts. The existence of thousands of dairy farmers is at stake.

It is unclear to me precisely which order regions will be affected by the Court order. The Order terminates Class I differentials in "all surplus and balanced marketing orders and all deficit orders that do not rely on direct shipments of alternative milk supplies from the Upper Midwest or from other deficit orders which in turn rely on the Upper Midwest for replacement supplies."

A balanced market is one with sufficient milk to meet demand plus a 40% reserve. A surplus market produces milk in excess of the demand and reserve percentage.

Thus, a few Southeastern states may be exempt from the Order.

For states like New York, Pennsylvania, New Jersey, and some Southwestern states, impact of the Order should come swiftly as banks decline to make loans to dairy farmers.

The expectation is that producer income will drop significantly and that farmers would go out of business as lenders refuse to provide credit.

Prices in the Northern Midwest could strengthen 20 to 30 cents per hundred-weight (one-hundred pounds) sold—but it is too early to really know how much their prices would go up.

This action was originally filed some years ago by Eric Olsen, Patricia Jensen, James Massey and Lynn Hayes representing the Farmers Legal Aid Action Group. It was filed before the Honorable Judge David S. Doty of the Fourth Division for the District of Minnesota.

Mr. President, I know that my distinguished colleague from Vermont, Mr. JEFFORDS, will also be addressing the Senate on the same issue. Again, it is about a court decision that was issued recently which could throw the entire system of supplying milk to consumers into chaos and could also lead to dramatically higher milk prices for consumers.

The decision was a runaway ruling that jeopardizes the survival of thousands of dairy farmers everywhere except the Midwest.

Now, the current milk marketing order system, which is a very complex